

1904, art. 63, sec. 1. 1888, art. 63, sec. 1. 1860, art. 61, sec. 1. 1838, ch. 205, sec. 1. 1845, ch. 176, sec. 3. 1898, ch. 502. 1902, ch. 432. 1910, ch. 52 (p. 564).

1. Every building erected and every building repaired, rebuilt or improved to the extent of one-fourth its value in Baltimore city and in any of the counties shall be subject to a lien for the payment of all debts contracted for work done for or about the same, and in the counties every such building shall also be subject to a lien for the payment of all debts contracted for materials furnished for or about the same.*

When a lien exists.

The material man's right to the lien is not affected by whether the owner has money in his hands due the builder, or whether the former has performed his contract with the latter. *Treusch v. Shryock*, 51 Md. 173.

It is no defense to a mechanics' lien claim that the materials were furnished on the personal credit of the contractor, or that there was no contract between the material man and the owner. *Agency. Blake v. Pitcher*, 46 Md. 465; *Sodini v. Winter*, 32 Md. 134.

Before the owner can be made responsible for materials furnished the contractor, an active and subsisting contract must be established between the owner and the contractor. *Greenway v. Turner*, 4 Md. 304.

A sub-contractor who does the work in the sense of giving it direction and being responsible for its execution, is entitled to a lien, and it makes no difference that the work was not done on the premises erected. *Evans Co. v. International Trust Co.*, 101 Md. 213.

This section held inapplicable because the repairs did not amount to one-fourth of the value of the building. A range, furnace, heaters, registers, etc., for heating a dwelling, are within the contemplation of this section. *Stebbins v. Culbreth*, 86 Md. 657. See also, *Schaper v. Bibb*, 71 Md. 150; *Weber v. Weatherby*, 34 Md. 659.

Where materials are furnished on a contract with one partner and used by both partners in the construction of a building, they being the owners as well as the builders, the lien can be enforced against the other partner and his assignee. *Real Estate Co. v. Phillips*, 90 Md. 528.

A material man's lien will attach although the owner of the lots upon which the houses are built has only an equitable interest. The fact that the lien is filed against a lesser interest than it might have been, does not destroy the lien. *Goldhelm v. Clark*, 68 Md. 504.

The fact that part of the builder's compensation is to be one of the houses built, does not affect the fastening of the lien. *McLaughlin v. Reinhart*, 54 Md. 78.

*Article 63, section 1, as repealed and re-enacted by the act of 1910, ch. 52 (p. 563), appears as follows in the official acts: "Every building erected and every building repaired, rebuilt or improved to the extent of one-fourth its value in Baltimore city and in any of the counties shall be subject to a lien for the payment of the debts contracted for, work done for, or about the same and in the counties. Every such building shall also be subject to a lien for the payment of all debts contracted for, materials furnished for or about the same." The case of *Dunn v. Brager*, decided by the court of appeals of Maryland on June 23, 1911—see *Daily Record*, July 20, 1911—is, however, authority for the above codification of the act of 1910, ch. 52.

The act of 1898, chapter 502, repealed sections 1, 2, 10, 11, 13, 14, 17, 20, 21, 23, 29, 30, 36 and 42 of this article, so far as these sections relate to Baltimore city, and re-enacted them with amendments limiting the right of lien in Baltimore city to mechanics and workmen for unpaid work and labor and putting an end as to Baltimore city to the lien in favor of material men—see notes to section 1. The pre-existing law was not changed by the act of 1898 as to the counties.